

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE:	§	
	§	CASE NO. 16-10398-HCM
CLEANFUEL USA, INC.	§	
	§	CHAPTER 11
DEBTOR.	§	

**DEBTOR’S MOTION FOR AUTHORITY TO OBTAIN POST-PETITION FINANCING
PURSUANT TO 11 U.S.C. §364(c)(1)**

TO THE HONORABLE U.S. BANKRUPTCY JUDGE:

CleanFUEL USA, Inc. (“Debtor” or “CFUSA”) files this Debtor’s Motion for Authority to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §364(c)(1) (the “Motion”) and would show the Court as follows:

Case Background

1. CFUSA filed for relief under Chapter 11 of the United State Bankruptcy Code on April 3, 2016. CFUSA is operating as a debtor-in-possession pursuant to 11 U.S.C. §§1107 and 1108.

2. This Court has jurisdiction over this matter under 28 U.S.C. §1334. This is a core matter pursuant to 28 U.S.C. §157(b)(2)(M).

3. CFUSA is a manufacturer of certified and alternative fuel equipment for propane autogas. CFUSA offers turnkey fuel and refueling infrastructure solutions; propane-powered engine systems and conversions; and fleet management programs. CFUSA is headquartered in Georgetown, Texas, with an engineering division in Wixom, Michigan. CFUSA has approximately 38 employees, with a monthly payroll expense of approximately \$280,000.00, inclusive of benefits, taxes, etc. Monthly operating expense is approximately \$118,000.00.

4. CFUSA is indebted to the Ed Rachal Foundation, a Texas non-profit corporation (the "Foundation") pursuant to a series of Loan Transitions, entered into between CFUSA, as borrower, and the Foundation, as lender (the "Loan Transactions") which are:

a) that certain Amended and Restated Loan Agreement dated June 28, 2013 (the "5,500,000.00 Restated Loan Agreement"), amending and restating that certain Loan Agreement dated November 2, 2012, as amended by that certain First Amendment to Loan Agreement dated February 20, 2013, that certain Second Amendment to Loan Agreement dated May 17, 2013, and that certain Amended and Restated Revolving Credit Note dated June 28, 2013, in an original principle amount of \$5,500,000.00 (the "5,500,000.00 Restated Note") increasing the principal amount of and otherwise amending and restating that certain Revolving Credit Note dated November 2, 2012, as amended by that certain First Amendment to Promissory Note dated February 20, 2013, and that certain Second Amendment to Promissory Note dated May 17, 2013;

b) that certain Amended and Restated Loan Agreement dated March 18, 2014, (the "5,468,400.00 Consolidated Loan Agreement"), consolidating and otherwise amending and restating that certain Loan Agreement dated May 31, 2013, and that certain Loan Agreement dated September 27, 2013; and that certain Secured Promissory Note in an original principal amount of \$5,468,400.00 dated March 18, 2014 (the "5,468,400.00 Consolidated Note"), increasing the principal amount of, consolidating and otherwise amending and restating that certain Secured Promissory Note dated May 31, 2013, that certain Secure Promissory Note dated September 27, 2013, and that certain Promissory Note date November 1, 2013;

c) that certain First Amendment to Amended and Restated Loan Agreement dated April 20, 2015, amending the \$5,468,400.00 Loan Agreement (as so amended, the “\$5,468,400.00 Consolidated Loan Agreement”) and that certain First Amendment to Secured Promissory Note dated April 20, 2015, increasing to \$5,968,400.00 the original principal amount and otherwise amending the \$5,468,400.00 Consolidated Note (as so amended, the “5,968,400.00 Consolidated Note”);

d) that certain Promissory Note dated May 1, 2015, in the original principal amount of \$300,000.00 (the “\$300,000.00 Bridge Note”);

e) that certain Promissory Note dated July 28, 2015, in the original principal amount of \$250,000.00 (the \$250,000.00 Bridge Note”); and

f) that certain Secured Advancing Term Loan Agreement dated August 7, 2015, (the “1,290,000.00 Advancing Term Loan Agreement”); and that certain Secured Advancing Term Promissory Note dated August 7, 2015, in original principal amount of up to \$1,290,000.00 (the \$1,290,000.00 Advancing Term Note”), under which the total principal amount advanced to date is \$1,033,036.00.

The total principal balance outstanding under the terms of the Loan Transactions is \$13,051,436.00, and the total accrued interest outstanding is \$3,607,161.00, for a total of \$16,658,597.00. The obligations owed to the Foundation are secured by perfected first lien and security interests in all of the assets of the Debtor (the “Pre-Petition Collateral”), including but not limited to accounts, accounts receivable, equipment, inventory, intellectual property, general intangibles and the proceeds thereof. Proceeds of the

collateral pledged to the Foundation constitute “Cash Collateral” of the Debtor under 11 U.S.C. § 363 (a).

5. Contemporaneously herewith, CFUSA has filed a motion for authority to use Cash Collateral to pay normal and necessary operating expenses in connection with its business in order to preserve and protect the business and the Estate and to avoid immediate and irreparable injury. However, CFUSA estimates that Cash Collateral will not be sufficient to cover all normal and necessary operating expenses incurred in the next couple of months.

6. CFUSA has not been able to obtain unsecured credit in order to cover the expected operating expense shortfall. However, the Foundation has agreed to loan CFUSA \$250,000.00 if the Foundation is granted an administrative claim with priority over all other administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code.

7. CFUSA therefore requests that this Court authorize CFUSA to obtain post-petition financing from the Foundation in the amount of \$250,000.00 and that the Court grant the Foundation an administrative claim for the amount advanced with priority over any and all other administrative claims pursuant to §364(c)(1), including any expense incurred or amounts payable to a Chapter 7 trustee or the costs of liquidation in the event that this case is converted to a case under Chapter 7 of the Bankruptcy Code (the “DIP Financing”). The DIP Financing will be due and payable on the earlier to occur of: a) confirmation of a plan under 11 U.S.C. section 1129; b) the date that this bankruptcy case is converted to a case under Chapter 7 or is dismissed; or c) 9 calendar months from the date that the DIP Financing is approved by final order of the Court. The DIP Financing will accrue interest at the rate of 8% per annum, which shall be due and payable at the time of maturity. Debtor shall also be responsible for payment of the Foundation’s

attorney fees' for preparation of the DIP Financing documents in the amount of no more than \$10,000, which shall be advanced at the time that the DIP Financing is approved and as part of the initial funding.

8. Contemporaneously herewith, CFUSA has filed a request for emergency consideration of this motion and related motions as "First day" Motions.

WHEREFORE, PREMISES CONSIDERED, CFUSA respectfully requests that this Court authorize CFUSA to obtain post-petition financing in the amount of \$250,000.00 from the Foundation and grant the Foundation an administrative claim for the amount advanced with priority over any and all other administrative claims pursuant to §364(c)(1). CFUSA request such other and further relief as it may show itself justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

By my signature above, I hereby certify that on the 6th day of April, 2016, a true and correct copy of the foregoing document was served upon the parties on the attached service list via electronic means as listed on the Court's ECF noticing system or by regular first class mail, postage prepaid.

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